IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.1910 of 2007

Date of decision: 10.12.2007.

Vijay Singh ....Petitioner

-Versus-

State of H.P. and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Petitioner: Mr.G.D.Verma, Senior Advocate with Mr.Ramesh Verma, Advocate.

For Respondents: Mr.M.S.Chandel, Advocate General with Mr.R.M.Bisht, Dy.A.G. for respondents 1 to 3.
Mr.Mahesh Sharma, counsel for R-4.

Deepak Gupta,J.(Oral)

This petition is directed against the order of the Deputy Commissioner, Shimla dated 18.9.2007 whereby he has dismissed the appeal filed by the petitioner under Section 181 of the H.P. Panchayati Raj Act (hereinafter referred to as the Act) and upheld the order passed by the Sub Divisional Officer(C), Rampur dated 15.5.2007.

Brief facts of the case are that the elections under the Act were held in December, 2005. The petitioner was elected as a Member of the Gram Panchayat, Bagalti from ward No.6 on 20.12.2005. The election of the petitioner was challenged by respondent No.4 who

filed an election petition under Section 122 read with Section 175 of the Act. The main ground of challenge was that the petitioner herein had encroached upon Government land and was therefore not entitled to contest the elections in terms of Section 122(c) of the Act.

The learned Authorized Officer after recording issues came to the conclusion that the petitioner Vijay Singh had in fact encroached upon forest land belonging to the Government and was therefore not eligible to stand for election and consequently his election was set-aside. The appeal filed by the petitioner was dismissed by the appellate authority.

The grounds of challenge are that; (i) the petitioner has not encroached upon any Government land, and (ii) that the order of eviction was passed against the petitioner on 3.11.1997 and therefore the petitioner was entitled to fight election after a period of six years.

Both the grounds are without any force. As far as the first ground is concerned, both the authorities have come to the conclusion on the basis of the evidence including the order of eviction PW-1/A and the statement of the petitioner PW-1/B recorded before the DFO, that the petitioner has encroached upon Government land. A perusal of the order Ext.PW-1/A shows that it has been found that Vijay Singh is in unauthorized occupation of Government land measuring 0-01-12 hectares in khasra No.1/3 DPF-C-96. The order of eviction was passed under the H.P. Public Premises and Land (Eviction & Rend Recovery) Act, 1971. The

statement of the petitioner had been recorded in the said proceedings wherein he had admitted that he had encroached upon the said land and has further stated that he is not in a position to vacate the encroachment because he has constructed a dhara in which he is running a shop and action according to law be taken. It is clear from the above that the petitioner was an encroacher upon the Government land.

As far as second contention is concerned it has been strenuously argued that the order of eviction having been passed on 3.11.1997 the petitioner could not be disqualified after a period of six years. This argument is without any force whatsoever. Section 122(1)(c) of the Act reads as follows:

> "**122.Disqualifications**.-(1)A person shall be disqualified for being chosen, as and for being, an office bearer, of a Panchayat-
> (a)&(b)xxxxxxxx
> (c)if he or any of his family member(s) has encroached upon any land belonging to, or taken on lease or requisitioned by or on behalf of, the State Government, a Municipality, a Panchayat or a Co-operative Society unless a period of six years has elapsed since the date on which he or any of his family member, as the case may be, is ejected there from or ceases to be the encroacher; or
> Explanation-For the purpose of this clause the expression "family member" shall mean the spouse, their son(s), unmarried daughter(s) and adopted son and unmarried daughter."

It is clear that the period of 6 years shall start running after the ejection or when the person ceases to be an encroacher. It is only after the encroacher vacates the land or the possession of the land is taken from him that the period of six years shall start running. In the present case the petitioner has not led an iota of evidence to show when he left the possession of the encroached land. There is nothing

on record to show that the petitioner has been evicted from the land in question.

This Court is clearly of the view that persons who encroach upon Government land have no right whatsoever to hold public office. There can be no misplaced sympathy in their favour. Once it was proved that the petitioner is an encroacher if the petitioner wanted to take benefit of the period of 6 years under Section 122 (1) (c) of the Act, he should have placed on record the material to show as to on which date he vacated the land in question. This has not been done and the only inference which can be drawn is that the petitioner is still in possession of the land.

In view of the above discussion there is no merit in the writ petition which is dismissed.

(Deepak Gupta),
Judge.

December 10, 2007.
PV

(V.K. Ahuja),
Judge.